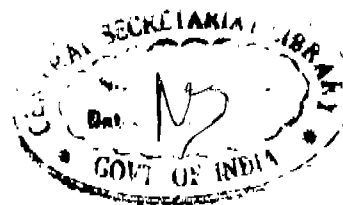




भारत का राजपत्र The Gazette of India

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भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 11th July, 1996:—

BILL NO. 29 OF 1996

A Bill to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Depositories Act, 1996.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 20th day of September, 1995.

Short title,
extent and
commence-
ment.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) “beneficial owner” means a person whose name is recorded as such with a depository;

15 of 1992.

(b) “Board” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(c) “bye-laws” means bye-laws made by a depository under section 26;

1 of 1956.

(d) “Company Law Board” means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956;

1 of 1956.

15 of 1992.

(e) “depository” means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;

(f) "issuer" means any person making an issue of securities;

(g) "participant" means a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;

(h) "prescribed" means prescribed by rules made under this Act;

15 of 1992.

(i) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;

(j) "registered owner" means a depository whose name is entered as such in the register of the issuer;

(k) "regulations" means the regulations made by the Board;

(l) "security" means such security as may be specified by the Board;

(m) "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts.

1 of 1956.

42 of 1956.

15 of 1992.

CHAPTER II

CERTIFICATE OF COMMENCEMENT OF BUSINESS

Certificate of commencement of business by depositories.

3. (1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.

(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

CHAPTER III

RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

Agreement between depository and participant.

4. (1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

Services of depository.

5. Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

Surrender of certificate of security.

6. (1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

1 of 1956.

(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred in sub-section (1) in its records, as the beneficial owner.

Registration of transfer of securities with depository.

7. (1) Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security, the depository shall inform the issuer accordingly.

8. (1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

Options to receive security certificate or hold securities with depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

9. (1) All securities held by a depository shall be dematerialised and shall be in a fungible form.

Securities in depositories to be in fungible form.

1 of 1956.

(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to the securities held by a depository on behalf of the beneficial owners.

10. (1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

Rights of depositories and beneficial owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

1 of 1956.

11. Every depository shall maintain a register and an index of beneficial owners in the manner provided in sections 150, 151 and 152 of the Companies Act, 1956.

Register of beneficial owner.

12. (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

Pledge or hypothecation of securities held in a depository.

(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

13. (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

Furnishing of information and records by depository and issuer.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

14. (1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

Option to opt out in respect of any security.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

15. The Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

Act 18 of 1891 to apply to depositories.

16. (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

Depositories to indemnify loss in certain cases.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

Rights and obligations of depositories, etc.

17. (1) Subject to the provisions of this Act, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

CHAPTER IV

ENQUIRY AND INSPECTION

Power of Board to call for information and enquiry.

18. (1) The Board, on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing,—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

Power of Board to give directions in certain cases.

19. Save as provided in this Act, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market,

it may issue such directions—

(a) to any depository or participant or any person associated with the securities market; or

(b) to any issuer,

as may be appropriate in the interest of investors or the securities market.

CHAPTER V

PENALTY

Offences.

20. Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

Offences by companies.

21. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER VI

MISCELLANEOUS

22. (1) No court shall take cognizance of any offence punishable under this Act or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

Cognizance of offences by courts.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

23. (1) Any person aggrieved by an order of the Board made under this Act, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

Appeals.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which an appeal may be preferred under sub-section (1) of section 23;

(b) the form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) the procedure for disposing of an appeal under sub-section (4) of section 23.

25. (1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Board may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.

Power of Board to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the form in which record is to be maintained under clause (i) of sub-section (1) of section 2;

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;

(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

(e) the conditions and the fees payable with respect to the issue of certificate of securities under sub-section (3) of section 14;

(f) the rights and obligations of the depositories, participants and the issuers under sub-section (1) of section 17;

(g) the eligibility criteria for admission of securities in the depository under sub-section (2) of section 17.

**Power of
depositories to
make bye-laws.**

26. (1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for—

(a) the eligibility criteria for admission and removal of securities in the depository;

(b) the conditions subject to which the securities shall be dealt with;

(c) the eligibility criteria for admission of any person as a participant;

(d) the manner and procedure for dematerialisation of securities;

(e) the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(h) the conditions of admission into and withdrawal from a participant by a beneficial owner;

(i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

(j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

(l) *inter se* rights and obligations among the depository, issuer, participants and beneficial owners;

(m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;

(n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

(p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

**Rules and
regulations to be
laid before
Parliament.**

27. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or

regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

28. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

Application of other laws not barred.

29. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Removal of difficulties.

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

30. The enactments specified in the Schedule to this Act shall be amended in the manner provided therein.

Amendments to certain enactments.

Ord. 26 of 1996.

31. (1) The Depositories (Third) Ordinance, 1996 is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See section 30)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

AMENDMENT

After section 8, the following section shall be inserted, namely:—

'8A. Notwithstanding anything contained in this Act,—

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Act, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

(d) transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

Explanation.—For the purposes of this section, the expressions "beneficial owner", "depository" and "issuer", shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Act, 1996.'

Securities not liable to stamp duty.

PART II

AMENDMENTS TO THE COMPANIES ACT, 1956

(1 OF 1956)

AMENDMENTS

1. In section 2, after clause (45A), the following clause shall be inserted, namely:—

'(45B) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.'

15 of 1992.

Interpretation of
certain words
and expressions.

2. After section 2, the following section shall be inserted, namely:—

“2A. Words and expressions used and not defined in this Act but defined in the Depositories Act, 1996 shall have the same meanings respectively assigned to them in that Act.”

3. In section 41, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.”

4. In section 49, in sub-section (5), after clause (b), the following clause shall be inserted, namely:—

“(c) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.”

5. In section 51, the following proviso shall be inserted, namely:—

“Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.”

6. Section 83 shall be omitted.

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.”

8. In section 111, after sub-section (13), the following sub-section shall be inserted, namely:—

“(14) In this section “company” means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.”

9. After section 111, the following section shall be inserted, namely:—

“111A. (1) In this section, unless the context otherwise requires, “company” means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985.

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, or transfer such shares or debentures and any person acquiring

Rectification of
register on
transfer.

15 of 1992.
1 of 1986.

such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9) (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.’

10. In section 113, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.”.

11. In section 150, in sub-section (1), in clause (b), the words “distinguishing each share by its number” shall be omitted.

12. In section 152, in sub-section (1), in clause (b), the words “distinguishing each debenture by its number” shall be omitted.

13. After section 152, the following section shall be inserted, namely:—

“152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of this Act.”.

Register and
index of
beneficial
owners to be of
debenture
holder.

14. In Schedule II, in Part II, in clause C, after sub-clause 9, the following sub-clause shall be inserted, namely:—

“9A. The details of opinion to subscribe for securities to be dealt with in a depository.”.

PART III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 OF 1956)

AMENDMENTS

1. In section 2, for clause (i), the following clause shall be substituted, namely:—

‘(i) “spot delivery contract” means a contract which provides for—

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual periods taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;’.

2. Section 22A shall be omitted.

PART IV

AMENDMENT TO THE INCOME-TAX ACT, 1961

(43 OF 1961)

AMENDMENT

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:—

(2A) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Act, 1996, and for the purposes of—

(i) section 48; and

(ii) proviso to clause (42A) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation.—For the purposes of this sub-section, the expressions "beneficial owner", "depository" and "security" shall have the meanings respectively assigned to them in clauses (a), (e) and (1) of sub-section (1) of section 2 of the Depositories Act, 1996.

PART V

AMENDMENT TO THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

(45 OF 1988)

AMENDMENT

In section 3, for sub-section (2), the following sub-section shall be substituted, namely:—

(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a—

(i) depository as a registered owner under sub-section (1) of section 10 of the Depositories Act, 1996;

(ii) participant as an agent of a depository.

Explanation.—The expressions "depository" and "participant" shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996.

PART VI

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

AMENDMENTS

1. In section 2, in sub-section (2), for the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956", the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996" shall be substituted.

42 of 1956.

2. In section 11, in sub-section (2), in clause (ba), for the words "depositories, custodians", the words "depositories, participants, custodians" shall be substituted.

3. In section 12, in sub-section (1A), for the words "depository, custodian", at both the places where they occur, the words "depository, participant, custodian" shall be substituted.

4. In section 16, in sub-section (1), for the words "this Act", the words and figures "this Act or the Depositories Act, 1996" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Paper based ownership and transfer of securities has been a major drawback of the Indian securities market as this often results in delay in settlement and transfer of securities, leads to 'bad delivery', theft, forgery, etc. causing hardship to the investor. In order to enable safe and speedy transfer of securities, it has become essential to enact a law which provides a legal framework for establishment of depositories.

2. The depositories legislation, *inter alia*, provides for—

(a) a legal framework for establishment of depositories for maintenance of ownership records of securities and effect changes in ownership records through book entry;

(b) dematerialisation of securities in the depositories mode. It provides the option to the investor to hold securities in physical form as at present or in a dematerialised form in depository;

(c) enabling free transferability of securities; and

(d) exempting all transfers of shares within a depository from stamp duty.

3. As Parliament was not in session, the President promulgated the Depositories (Third) Ordinance, 1996 on 21st June, 1996 for the said purpose.

4. The Bill seeks to replace the said Ordinance.

NEW DELHI;
The 4th July, 1996.

P. CHIDAMBARAM.

NOTES ON CLAUSES

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for obtaining a certificate of commencement of business by a depository from the Board and such certificate shall be in such form as may be specified by the regulations. The Board shall not grant a certificate unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions.

Clause 4 seeks to provide that every depository shall enter into an agreement with one or more participants as its agents and such agreement shall be in such form as may be specified by the bye-laws.

Clause 5 provides that any person may enter into an agreement with any depository for availing its services and such agreement shall be in such form as may be specified by the bye-laws.

Clause 6 provides that any person who seeks to avail the services of a depository shall surrender the certificate of security to the issuer in such manner as may be specified by the regulations. The issuer on receipt of such certificate of security shall cancel certificate of security and substitute in its records the name of the depository as registered owner in respect of that security. The depository shall enter the name of such person who has surrendered the certificate of security in its records as the beneficial owner.

Clause 7 provides for registration of transfer of securities in the name of the transferee with a depository. This clause further provides that the depository shall inform the issuer if a beneficial owner or a transferee of any security seeks to have the custody of such security.

Clause 8 provides for options either to receive security certificate or hold securities with a depository.

Clause 9 provides for securities held by a depository to be dematerialised and to be in a fungible form.

Clause 10 provides for the rights of the depository and beneficial owners.

Clause 11 seeks to provide for maintenance of a register and an index of beneficial owners in the manner provided in sections 150, 151 and 152 of the Companies Act, 1956.

Clause 12 provides for pledge or hypothecation of securities by a beneficial owner. Such beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly and such entries in the records of depository shall be evidence of a pledge or hypothecation.

Clause 13 provides for furnishing information about the transfer of securities in the name of a beneficial owner and records by a depository and issuer.

Clause 14 provides for options of the beneficial owner to opt out in respect of any security on fulfilment of certain conditions and payment of such fees as specified by the regulations.

Clause 15 provides that the Bankers' Books Evidence Act, 1891 to apply to a depository as if it were a bank in section 2 of that Act.

Clause 16 provides for indemnifying the loss caused to the beneficial owner due to the negligence of the depository or the participant. This clause further provides that where the loss indemnified by the depository is due to the negligence of the participant, such depository shall have the right to recover the same from such participant.

Clause 17 states that rights and obligations of the depositories, participants and issuers whose securities are dealt with by a depository and eligibility criteria for admission of securities into the depository shall be specified by the regulations.

Clause 18 deals with the power of the Board to call for information from issuer, depository, participant or beneficial owner or authorise any person to make an enquiry or

inspection in relation to the affairs of the issuer, beneficial owner, depository or participant.

Clause 19 confers the power on the Board to give direction in certain cases after causing enquiry or inspection.

Clause 20 deals with offences in contravention of the provisions of this Bill.

Clause 21 deals with the offences committed by companies in contravention of the provisions of this Bill.

Clause 22 seeks to provide that no court shall take cognizance of offences punishable under the Bill or any regulations or bye-laws except on a complaint made by the Board. This clause further provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under the Bill.

Clause 23 deals with the provisions relating to appeals by a person aggrieved by an order of the Board made under this Bill.

Clause 24 empowers the Central Government to make rules for carrying out the provisions of the Bill in particular relating to (a) the time within which an appeal may be preferred under sub-clause (1) of clause 23; (b) the form in which an appeal may be preferred under sub-clause (3) of clause 23 and the fees payable in respect of such appeal; and (c) the procedure for disposing of an appeal under sub-clause (4) of clause 23.

Clause 25 empowers the Board to make regulations with regard to various matters specified therein.

Clause 26 lays down the powers of depositories to make bye-laws with the previous approval of the Board.

Clause 27 lays down that the rules and regulations made under the Bill would be laid before the Parliament.

Clause 28 provides that the provisions of the Bill shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

Clause 29 seeks to empower the Central Government to remove any difficulty which may arise in giving effect to the provisions of the Bill.

Clause 30 provides for amendment to certain provisions of the Indian Stamp Act, 1899, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Income-tax Act, 1961, the *Benami* Transactions (Prohibition) Act, 1988 and the Securities and Exchange Board of India Act, 1992 provided in the Schedule to the Bill.

Clause 31 seeks to repeal the Depositories (Third) Ordinance, 1996 and save actions taken thereunder as if taken under the corresponding provisions of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill seeks to empower Central Government to make rules for the time within which an appeal may be preferred from the orders SEBI, the form in which an appeal may be preferred, and the fees payable in respect of such appeal and the procedure for disposing of an appeal.

2. Clause 25 of the Bill seeks to empower SEBI to make regulations for the form in which record is to be maintained by the depository, the form in which certificate of commencement of business shall be issued by SEBI, the manner in which the certificate of security shall be surrendered by an investor, the manner of creating a pledge of hypothecation in respect of a security owned by a beneficial owner, the conditions and fee payable with respect to issue of certificate of securities while coming out of depositories, the rights and obligations of depositories, participants and the issuers, and the eligibility criteria for admission of securities into depository.

3. The matters in respect of which rules and regulations may be made are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

4. The delegation to legislative power is, therefore, of a normal character.

BILL No. 28 OF 1996

THE SUPREME COURT AND HIGH COURT JUDGES (CONDITIONS OF SERVICE)
AMENDMENT BILL, 1996

A Bill further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Supreme Court and High Court Judges (Conditions of Service) Amendment Act, 1996.

Short title and commencement.

(2) It shall be deemed to have come into force on the 11th day of January, 1996.

CHAPTER II

AMENDMENT OF THE SUPREME COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1958

41 of 1958. 2. In section 23A of the Supreme Court Judges (Conditions of Service) Act, 1958 (hereinafter referred to as the Supreme Court Judges Act), for the words "one hundred and fifty litres of petrol every month or the actual consumption of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted.

Amendment of section 23A.

3. In section 23B of the Supreme Court Judges Act, for the words "one thousand two hundred and fifty" and "seven hundred and fifty", the words "four thousand" and "three thousand" shall respectively be substituted.

Amendment of section 23B.

CHAPTER III

AMENDMENT OF THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1954

- Amendment of section 22B. **4. In section 22B of the High Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as the High Court Judges Act), for the words “one hundred and fifty litres of petrol every month or the actual consumption of petrol”, the words “two hundred litres of fuel every month or the actual consumption of fuel” shall be substituted.** 28 of 1954.
- Amendment of section 22C. **5. In section 22C of the High Court Judges Act, for the words “five hundred” and “three hundred”, the words “three thousand” and “two thousand” shall respectively be substituted.**
- Repeal and saving. **6. (1) The Supreme Court and High Court Judges (Conditions of Service) Amendment Third Ordinance, 1996, is hereby repealed.** Ord. 29 of 1996.
- (2) Notwithstanding such repeal, anything done or any action taken under the Supreme Court Judges Act and the High Court Judges Act, as amended by the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of the respective Act aforesaid as amended by this Act.
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STATEMENT OF OBJECTS AND REASONS

The conditions of service of the Judges of the Supreme Court and High Courts are governed by the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954 respectively. Since the passing of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, there had been no improvement the conditions of service of Supreme Court and High Court Judges. There has, however, been persistent demand for further improvement in the conditions of service of the Judges of the Supreme Court and High Courts.

2. There had been increase in the price of petrol from time to time. Besides, the Judges have to undertake more journeys now a days for attending seminars, conferences, etc. Similarly, Chief Justices and Judges are required to hold periodical meetings of Judicial Officers and with the members of the Bar. Considering the increase in the number of participants in such meetings and also the increase in the cost of eatables and considering the increase in the price of petrol, it has become necessary to amend the aforesaid Acts to increase the sumptuary allowances and conveyance facilities to the Chief Justices and Judges. Since Parliament was not in session, the President promulgated the Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996 on 11th January, 1996 to give effect to the increase in the sumptuary allowance and conveyance facilities to the Judges.

3. The Supreme Court and High Court Judges (Conditions of Service) Amendment Bill, 1996 seeking to replace the above Ordinance was introduced in the Lok Sabha on 29th February, 1996. However, the Bill had not been passed and it lapsed on the dissolution of the Tenth Lok Sabha. As the said Ordinance was due to expire on 7th April, 1996, the Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996 was repromulgated on 27th March, 1996. Since the validity of the repromulgated Ordinance was due to expire in the first week of July, 1996 and since Parliament was not in session, the Supreme Court and High Court Judges (Conditions of Service) Amendment Third Ordinance, 1996 was repromulgated on 21st June, 1996.

4. The Bill seeks to replace the said Ordinance.

NEW DELHI;
The 4 July, 1996.

RAMAKANT D. KHALAP.

FINANCIAL MEMORANDUM

Clauses 2 and 4 of the Bill seek to amend section 23A of the Supreme Court Judges (Conditions of Service) Act, 1958 and section 22B of the High Court Judges (Conditions of Service) Act, 1954 to raise the entitlement of petrol to the Judges from one hundred and fifty litres of petrol every month to two hundred litres of fuel every month. The additional expenditure on this account in respect of the Judges of the Supreme Court and Delhi High Court will be charged on the Consolidated Fund of India. On the basis of present rate of petrol and the sanctioned strength of the Judges of the Supreme Court and Delhi High Court, which is 26 and 31 respectively, the additional recurring expenditure on the aforesaid account works out to be about Rs. 7,27,000 per annum. In respect of the Judges of the other High Courts the expenditure will be charged on the Consolidated Fund of the States.

2. Clauses 3 and 5 of the Bill seek to amend section 23B of the Supreme Court Judges (Conditions of Service) Act, 1958 and section 22C of the High Court Judges (Conditions of Service) Act, 1954 to increase the sumptuary allowance payable to the Judges. The sumptuary allowance shall be raised to Rs. 4000 per month from Rs. 1250 per month for the Chief Justice of India and to Rs. 3000 per month from Rs. 750 per month for the Judges of the Supreme Court. For the Chief Justices of the High Courts, the sumptuary allowance shall be raised to Rs. 3000 per month from Rs. 500 per month and for the Judges of the High Courts, it shall be raised to Rs. 2000 per month from Rs. 300 per month. The additional recurring expenditure of Rs. 13,50,000 per annum on account of sumptuary allowance in respect of Judges of the Supreme Court and Delhi High Court will be charged on the Consolidated Fund of India. In respect of the Judges of the other High Courts, the additional expenditure on this account will be charged on the Consolidated Fund of the States.

3. There will be no other recurring or non-recurring expenditure on account of proposals contained in the Bill.

BILL NO. 20 OF 1996

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1996

A Bill further to amend the Representation of the People Act, 1950.

BE it enacted by Parliament in the Forty-seventh Year of Republic of India as follows:—

1. This Act may be called the Representation of the People (Amendment) Act, 1996.

Short title.

2. In the Fourth Schedule to the Representation of the People Act, 1950,—

Amendment of
Act 43 of 1950.

(a) under the heading “KARNATAKA”, for the entries 1 to 5, the following entries shall be substituted, namely:—

- “1. City Municipal Corporations.
2. City Municipal Councils.
3. Town Municipal Councils.
4. Town Panchayats.
5. Zilla Panchayats.
6. Taluk Panchayats.
7. Cantonment Boards.”;

(b) under the heading “UTTAR PRADESH”, for the entries 1 to 6, the following entries shall be substituted, namely:—

- “1. Municipal Corporations.
2. Municipal Councils.
3. Zila Panchayats.
4. Nagar Panchayats.
5. Kshettra Panchayats.
6. Cantonment Boards.”.

STATEMENT OF OBJECTS AND REASONS

The Fourth Schedule to the Representation of the People Act, 1950 specifies the local authorities for the purposes of election to the Legislative Councils in the States having Legislative Councils.

2. Consequent to the coming into force of the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992, the States of Karnataka and Uttar Pradesh had amended the laws relating to the local bodies. The State of Karnataka has recommended that for the existing entries in the Fourth Schedule to the Representation of the People Act, 1950, the entries, namely, City Municipal Corporations, City Municipal Councils, Town Municipal Councils, Town Panchayats, Zilla Panchayats, Taluk Panchayats and Cantonment Boards may be substituted. Similarly, in the said Schedule, for the entries relating to Uttar Pradesh, the following entries shall be substituted as recommended by the State Government of Uttar Pradesh, namely, Municipal Corporations, Municipal Councils, Zila Panchayats, Nagar Panchayats, Kshettra Panchayats and Cantonment Boards.

3. The Bill seeks to achieve the above object.

NEW DELHI;
The 2nd July, 1996.

RAMAKANT D. KHALAP.

SURENDRA MISHRA,
Secretary-General.